A Publication of the Vermont Human Rights Commission and CVOEO Fair Housing Project

WHAT'S INSIDE:

- Page 3: Together Again!
- ➤ Page 4-5: Around the Nation
- Page 5: Online Resources
- Page 6: Recent Vermont Fair Housing Cases
- Page 6: Fair Housing Trainings
- Page 7:
 Join Us,
 Buzz in Lending,
 Fair Housing
 Month
- Page 8: Contact Info

HOUSING AND DOMESTIC VIOLENCE IN VERMONT

Domestic violence in Vermont is often hidden, but it is a pervasive problem, affecting individuals and families across class, geographic, and gender lines. In our small state, with a population just over 600,000, the Vermont Network against Domestic and Sexual Violence (VNDSV) received more than 17,000 calls to its hotlines in 2006.¹ Safehouses and shelters across Vermont housed 538 survivors of domestic violence in 2006.² Between 1994 and 2006, forty-nine percent of the homicides committed in Vermont were related to domestic violence.³

There is growing recognition of the extent of domestic and sexual violence in Vermont. At the state level, the VNDSV has worked with legislators to propose an omnibus bill on domestic violence. As this article goes to press, the bill is being considered by the Senate Judiciary Committee. The bill acknowledges the numerous ways that domestic violence affects the lives of victims, including its effect on victims' housing choices. The bill does not propose particular changes to existing law pertaining to housing and domestic violence; instead, the bill would authorize a study committee to explore the effect of domestic violence on housing choice and stability, with a particular focus on housing discrimination against victims of domestic and sexual violence. passed, the study committee will report back to the legislature with its findings by December 15, 2008.

According to Jill Richard, Economic Justice Coordinator at the VNDSV, housing discrimination is a "real threat to the safety and stability of domestic

A NATIONWIDE LOOK AT DOMESTIC VIOLENCE AND FAIR HOUSING LAWS

Neither Vermont's Fair Housing Act nor the federal housing law, specifically state that "victims of domestic violence" are a protected category. However, in a Vermont case before the federal district court in Vermont, the plaintiff alleged that a woman was evicted because she was a victim of domestic violence. The United States District Court in the Bouley v. Young-Sabourin¹ case held that if this fact was proven to be true it could constitute unlawful discrimination under the federal Fair Housing Act. In reaching its decision, the Bouley court cited another federal case in which the court stated, "There is evidence in the record from which a jury could find the defendants' domestic disputes policy had a discriminatory impact and was motivated by intent to discriminate against women."2 This case mirrors what many jurisdictions around the nation are finding - that because the vast majority of domestic violence victims are female, housing rules that penalize a victim for actions of the perpetrator disproportionately affect women and are therefore discriminatory.

Nationwide, three states (North Carolina, Rhode Island and Washington) and the District of Columbia have enacted laws specifically listing domestic violence victims as a protected category in fair housing laws. Seventeen other states have enacted laws that fall short of naming victims of domestic violence as a protected class for purposes of discrimination;³ however, as described below these laws provide some form of housing protection for victims of domestic violence. Additionally, some counties and cities have also taken



HOUSING & DOMESTIC VIOLENCE IN VT... continued from page 1

violence survivors." It is not uncommon for property owners and property managers to refuse to rent to survivors of domestic violence. Property owners cite concerns about the safety of other tenants, concerns about an increase in criminal activity and breaches of the peace by abusers who could follow their victims to their homes. Not only have property owners refused to rent to victims of domestic violence, but victims have been evicted from their dwellings when there have been incidents of violence.

These concerns are not limited to property owners. Neighbors and community groups share these same concerns. In Saint Johnsbury, a transitional housing shelter for victims of domestic violence faces community opposition from neighboring shopkeepers who fear that domestic violence victims could attract violent and drug-addicted abusers to the commercial district in which the shelter is to be located.⁴

Despite the link between domestic violence and housing discrimination in the state, the Vermont Human Rights Commission has not received many charges or complaints involving domestic violence. This may be because "victim of domestic violence" is not a protected category under either the Vermont Fair Housing Act or the federal Fair Housing Act. However, the plaintiff in Bouley v. Young-Sanbourin⁵ successfully argued that a charge of housing discrimination based on one's status as a victim of domestic violence is essentially a charge based on sex discrimination because domestic violence disproportionately impacts females more than males. Therefore, when a property owner makes an adverse housing decision because a woman is a victim of domestic violence, she/he may be illegally discriminating against the domestic violence victim.

According to Richard of the VNDSV, because the charge of discrimination based on sex is attenuated rather than directly based on the victim's status as a victim of domestic violence, domestic violence advocates and victims do not always immediately recognize that a victim's loss of housing may be addressed through existing fair housing statutory protections. Women who do experience domestic violence-based housing discrimination may be protected under federal housing discrimination statutes and/or case law.

Vermont State Housing Authority (VSHA) which manages the state's Section 8 voucher program, gives priority to women who are survivors of domestic violence. According to Kathleen Burke of the VSHA, there are currently 54 families with a domestic violence preference on the Section 8 voucher waiting list; however, because the demand for federal Section 8 housing vouchers exceeds the supply, domestic violence survivors may still wait years to receive a housing voucher. Presently, there are 2,200 families on the Vermont Section 8 waiting list. In 2007, the wait for a voucher was over five years long. Because of the long waiting period for a voucher, the Vermont Section 8 waiting list is currently closed to new applicants, including survivors of domestic violence.

VSHA field staff, who work directly with Section 8 voucher recipients, report that only 30 to 40 percent of domestic violence victims who receive Section 8 housing vouchers successfully find housing. Victims of domestic violence often feel unsafe in their communities and therefore find themselves seeking housing in new areas away from their abusers. Victims face some unique challenges when looking for housing. They may have trouble getting positive references from previous property owners because of domestic violence disturbances in their previous housing. Additionally, the VSHA field staff often find that female domestic violence victims have never rented a place on their own so they do not have any rental references or history. The difficulties faced by victims of domestic violence are reflected in VSHA statistics regarding Section 8 vouchers. VSHA stated that 12 of the last 38 Section 8 vouchers given to victims of domestic violence were returned because the women were unable to find housing.

The omnibus bill before the Vermont legislature could provide a starting point for addressing the serious and unique housing problems faced by victims of domestic violence and property owners who have concerns about renting to victims of domestic violence.

Endnotes

- See the Vermont Network against Domestic and Sexual Violence website, http://www.vtnetwork.org/main.php//DomesticViolence.
- 2 See id.
- 3 See id
- 4 See Taylor Reed, Caledonian Record, "Proposed Shelter for Abused Women Faces Opposition," http://caledonianrecord.com/main.asp?

 Search=1&ArticleID=2303&SectionID=1&SubSectionID=1&S=1
 February 7, 2008
- 5 <u>Bouley v. Young-Sabourin</u>, 394 F. Supp.2d 675 (D.Vt. 2005).

This newsletter is supported by funds provided by the U.S. Department of Housing & Urban Development.

A NATIONWIDE LOOK ... continued from page 1

steps to provide housing protection for victims of domestic violence.

The various types of protection that are being afforded victims of domestic violence include: permitting victims to terminate leases early without penalty; permitting victims to have their locks changed; permitting a person to assert her/his status as a victim of domestic violence as an affirmative defense against eviction; requiring that landlords not divulge the whereabouts of victims; allowing a landlord to evict the perpetrator of domestic violence; and prohibiting a landlord from taking retaliatory actions such as raising rent because a person is a victim of domestic violence.

Much of the movement by states and other jurisdictions to provide housing protection for victims of domestic violence originates from the federal Violence Against Women Act of 2005. This law protects victims of domestic violence living in federally funded public housing, living in project-based Section 8 housing or receiving federal housing assistance in the form of Section 8 vouchers from discrimination based on their status as domestic violence victims. Specifically, a victim may not be denied admission to housing or voucher assistance based on their status as a victim of domestic violence. Additionally, they may not be evicted or terminated from the Section 8 voucher program because of incidents of domestic violence.⁴

A problem often raised regarding domestic violence protection laws concerns how to identify/verify that someone is a victim of domestic violence. There is concern that people might abuse the protections established by these types of laws. A survey of laws that provide housing protection to victims of domestic violence reveals a common requirement that a victim must provide some form of third party verification of the violence. Different laws use phrases such as "documented incident," "evidence" and "verification of the event." The

actual proof of being a victim of domestic violence varies from state to state but includes a police summons, a written statement from a third party professional (e.g. social workers, clergy or crisis center workers), a medical report, a safety plan or a protective order. Most laws require that the documented "event" be within a specific time frame of the adverse housing action.

Other features of various laws include triple damage payments to landlords if a victim falsely alleges domestic violence and the perpetrators being held responsible for any economic damages a landlord incurs as a result of a victim accessing protection under a law (e.g. breaking a lease early and with little notice). Most of those laws require that a landlord keep any information regarding domestic violence confidential.

Finding ways to provide housing protection for victims of domestic violence requires balancing property owners' legitimate business concerns with the rights of victims. Property owners have a duty to provide peaceful enjoyment of their rental units to their tenants. The safety of other tenants is an issue that must be addressed when considering legislation to protect victims from domestic violence from being discriminated against when seeking housing. Additionally, property owners have a legitimate business interest in protecting the rental unit from damage due to violence. The above-mentioned laws are attempts to balance the interests and rights of both the victim and property owner.

Endnotes

- 1 <u>Bouley v. Young-Sabourin</u>, 394 F. Supp.2d 675, 678 (D.Vt. 2005).
- Smith v. City of Elyria, 857 F. Supp 1203, 1212 (N.D. Ohio 1994).
- 3 Eight other states have either recently considered proposals or are presently considering proposals to address housing rights of domestic violence victims.
- 4 42 U.S.C. §§1437d, 1437f.
- 5 Women who qualify for federally funded housing assistance are afforded protection that is not available to other women in most states.

Together Again!

The Vermont Human Rights Commission and CVOEO are again partnering in the publication of Vermont Fair Housing News. It is exciting for the CVOEO Fair Housing Project to contribute to this publication and assist in strengthening the outreach and education efforts of both organizations. The ongoing support that the Vermont Human Rights Commission provides is an asset for the CVOEO Fair Housing Project. "Great things are done by a series of small things brought together" –Vincent Van Gogh

An eco-friendly version of the newsletter will be available at the CVOEO Fair Housing Project website (www.cvoeo.org) and the Vermont Human Rights Commission website (www.hrc.state.vt.us). You can also sign up to have the newsletter e-mailed right to your inbox by sending a request by e-mail to kianelli@cvoeo.org.

CASE HIGHLIGHT Repko v. Zoning Hearing Board Of Greensburg, 517 A.2d 1028 (Pa.Cmwlth.1986)

The town of Greensburg, Pennsylvania granted a special exception to Women's Services of Westmoreland County to allow it to renovate a home in a residential district and operate it as a domestic violence shelter for abused women and their children. A group of nearby residents filed an appeal, asserting that the proposed use would disturb the neighborhood. The Commonwealth Court of Pennsylvania denied the appeal, holding there was sufficient evidence to show that use of the residence as a shelter would not disturb the neighborhood. The court relied, in part, upon the testimony of a Greensburg police officer who was a neighbor of Women's Services' then-existing facility. The police officer testified that the existing shelter had operated peacefully with no negative impact on his neighborhood.

AROUND THE NATION

U.S. JUSTICE DEPARTMENT SETTLES DISABILITY RIGHTS CASE WITH NATIONAL PROVIDER OF RETIREMENT HOUSING

In August 2007, the U.S. Justice Department settled a lawsuit against Chicago-based Covenant Retirement Communities Inc. The complaint alleged that this nationwide provider of retirement housing violated the Fair Housing Act by discriminating against residents based on disability.

According to the federal complaint, the defendants employed policies that required residents who used mobility aids (e.g., canes, walkers, wheelchairs and scooters) to obtain personal liability insurance, demonstrate their competence at operating motorized aids, and provide physicians' certifications of need. The defendants also barred residents and visitors from using mobility aids in certain common areas, including dining rooms, and steered persons with mobility impairments from independent living to assisted living.

The settlement agreement dismantles those policies and calls for employee training, a nondiscrimination policy, record keeping, and monitoring. Additionally, defendants will establish a \$530,000 settlement fund for persons who may have been injured by their policies and pay a \$30,000 civil penalty.

"This agreement will ensure that residents with disabilities are not denied equal access to their housing communities," said Wan J. Kim, Assistant Attorney General for the Civil Rights Division." The facilities that were employing these policies were in California, Colorado, Connecticut, Florida, Illinois, Michigan, Minnesota, Oregon and Washington.

U.S. JUSTICE DEPARTMENT SUES INDIANA TOWNSHIP FOR REFUSING VARIANCE

In St. John, Indiana, zoning regulations prohibit unrelated adults from living together in a single family home. A home owner applied for a variance, stating that he wanted to allow one unrelated person with multiple sclerosis to live in his house. The home owner's wife had died of the disease, and he stated he wanted to provide housing and care in her memory. The town's zoning appeals board denied his request for a variance. In October 2007, the U.S. Justice Department sued the town, alleging that the requested variance was reasonable and necessary to afford prospective residents with disabilities an equal opportunity to use and enjoy a dwelling in a residential neighborhood in St. John. The suit seeks a court order prohibiting future discrimination by the town and requiring the town to grant the requested variance, pay monetary damages to compensate victims, and pay a civil penalty.

U.S. JUSTICE DEPARTMENT SETTLES SEXUAL HARASSMENT LAWSUIT AGAINST MISSISSIPPI BANK AND FORMER BANK VICE PRESIDENT

On November 7, 2007, a federal district court in Mississippi entered a consent order in United States v. First National Bank of Pontotoc. The lawsuit, filed on April 27, 2006, alleged that a vice president of the First National Bank of Pontotoc used his position with the Bank to

sexually harass female borrowers and applicants for credit. The vice-president's conduct included making offensive comments, engaging in unwanted sexual touching, and requesting or demanding sexual favors from female customers in connection with the extension of credit. The consent decree will require the defendants to pay \$250,000 to 15 already identified victims, up to \$50,000 for any additional victims, and \$50,000 to the United States as a civil penalty. Under the settlement, employees of the First National Bank of Pontotoc are required to receive training on the prohibition against sexual harassment under federal fair lending laws. The agreement also requires the bank to implement both a sexual harassment policy and a procedure by which an individual may file a sexual harassment complaint against any employee or agent of the First National Bank of Pontotoc. The consent decree will remain in effect for five years.

U.S. JUSTICE DEPARTMENT SETTLES LAWSUIT WITH ARKANSAS LANDLORD ALLEGING DISCRIMINATION AGAINST FAMILIES WITH CHILDREN

On September 28, 2007, the United States filed a complaint and a consent decree against the owners and management of Phoenix Village Apartments in a federal district court in Arkansas. The complaint alleged a pattern or practice of unlawfully refusing to rent apartments to families with minor children. Under the terms of the consent decree, entered by the court on October 1, 2007, the defendants will pay up to \$165,000 to compensate victims and \$20,000 in civil penalties to the United States. The consent decree also calls for training, a nondiscrimination policy, record keeping and monitoring. The consent decree will remain in effect for four years. This case was based on evidence developed by fair housing testers – individuals who pose as renters for the purpose of gathering information about possible discriminatory practices.

HOUSING AGENCY IN IOWA AGREES TO SETTLE DISCRIMINATION CASE

On October 25, 2007, the federal district court in Des Moines, Iowa approved a consent decree resolving a U.S. Department of Justice disability discrimination lawsuit against the Municipal Housing Agency of Council Bluffs, Iowa and two Agency employees. The Department's complaint alleged that the defendants violated the federal Fair Housing Act by maintaining a policy of requiring prospective tenants to divulge mental health information and, on occasion, to make their mental health records available to the defendants as part of the tenancy application process.

Under the consent decree, the defendants will issue a nondiscrimination policy, and train employees on the Fair Housing Act and the new policy. They will also pay \$31,700 in damages to the complainants, \$3,300 in damages to a fair housing organization, and \$5,000 as a civil penalty to the United States.

AROUND THE NATION, continued

"No one in this country should be treated differently in his or her search for a home because of a disability," said Acting Assistant Attorney General Rena J. Comisac. "We are pleased that the Municipal Housing Agency of Council Bluffs changed its admissions and occupancy policy once the problem with the policy was brought to its attention."

GEORGIA LANDLORDS AGREE TO STOP DISCRIMINATING AGAINST PEOPLE WHO USE SERVICE ANIMALS

On October 31, 2007, the federal district court in Savannah, Georgia, approved a settlement of a U.S. Department of Justice disability discrimination lawsuit against the owners and managers of the Hickory Plantation and Willow Way Apartments, both located in Camden County, Georgia. According to the Department's complaint, defendants violated the federal Fair Housing Act by refusing to rent an apartment at Hickory Plantation to a person with a visual disability who used a guide dog.

Under the agreement, the defendants will pay \$35,000 to compensate additional victims who may be identified at Hickory Plantation and Willow Way, pay a \$20,000 civil penalty to the U.S. government, establish and follow nondiscriminatory tenancy procedures, undergo fair housing training, and file reports with the government.

"Individuals who use guide dogs are entitled to the same housing opportunities as people who don't," said Acting Assistant Attorney General Rena J. Comisac. "Landlords must understand that they have a responsibility to make reasonable accommodations for persons with disabilities, and where they fail to do so, the Department will enforce the law."

DEVELOPERS, ARCHITECTS, AND ENGINEERS IN KENTUCKY, WASHINGTON, AND GEORGIA SUED FOR DISABILITY DISCRIMINATION

In September 2007, the U.S. Department of Justice filed three separate lawsuits alleging that developers, architects, and engineers failed to design and construct residential complexes in three states with accessible features required by the Fair Housing Act. The suits affect over 1,300 ground floor units and the public and common use areas at 18 rental or condominium apartment complexes in Kentucky, Washington, and Georgia.

"New multi-family housing complexes built after March 1991 must have basic accessible features for persons with disabilities," said Acting Assistant Attorney General Rena J. Comisac. "Yet 16 years later, the Justice Department must still remain vigilant in pursuing those who fail to comply. We demand that retrofits be made to ensure that persons with disabilities have an equal opportunity to enjoy their homes."

The lawsuits seek court orders requiring the defendants to modify the complexes to bring them into compliance with federal laws and prohibiting future discrimination by the defendants. They also seek monetary damages to compensate victims and civil penalties to be paid to the government to vindicate the public interest.

ON-LINE RESOURCES FOR FAIR HOUSING

There are many on-line resources for information about fair housing issues. Here are some useful web sites that will provide you with information and instruction. Please also see the directory of Vermont fair housing organizations in the Fall 2007 issue of Vermont Fair Housing News, which lists the web addresses and contact information for those organizations.

National Fair Housing Advocate On-Line

www.fairhousing.com

News, resources, cases, statutes and a lot more information about fair housing issues across the country.

National Fair Housing Alliance

www.nationalfairhousing.org

An organization devoted to promoting Fair Housing laws nationwide.

Fair Housing Law

www.fairhousinglaw.org

A site with information about fair housing laws and enforcement resources.

National Association of Realtors Field Guide to Fair Housing www.realtor.org/libweb.nsf/pages/fg705

A guide to fair housing specifically aimed toward realtors.

Vermont Department of Housing and Community Affairs Fair Housing Page

www.dhca.state.vt.us/Housing/fairhousing.htm
A discussion of fair housing as it applies to Vermont communities and municipalities.

Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity

www.hud.gov/offices/fheo/index.cfm

Connects to HUD resources about enforcement of federal Fair Housing laws.

Federal Fair Housing Act

www.usdoj.gov/crt/housing/title8.htm
The text of the federal Fair Housing Act.

Vermont Fair Housing and Public Accommodations Act

www.leg.state.vt.us/statutes/sections.cfm?Title=09&Chapter=139
The text of the Vermont Fair Housing and Public Accommodations Act.

FindLaw

www.findlaw.com

Findlaw is a general resource and search engine for legal issues, including civil rights issues, federal and state statutes and court cases.

Bazelon Center for Mental Health Law

www.bazelon.org/issues/housing/index.htm
Bazelon has extensive resources and informational documents
regarding aspects of mental health law, including extensive
information about reasonable accommodations and service animals.

There are many other web pages for nationwide, state and local fair housing organizations. Just type "fair housing" into any search engine to locate these other resources.

RECENT VERMONT FAIR HOUSING CASES

Since the last issue of Vermont Fair Housing News, several fair housing cases before the Human Rights Commission have been closed.

- One case was a charge based on Vermont's fair housing law that provides protection to Vermonters based on sexual orientation. The Investigative Report in the case recommended that there were "no reasonable grounds" to believe that discrimination had taken place. The Human Rights Commissioners agreed with this recommendation.
- Two cases were settled through Pre-Determination Conciliation Agreements (PDCAs).
 - ♦ The first PDCA resolved a joint Vermont Human Rights Commission and HUD charge. The charging party alleged that a small Vermont newspaper was discriminating in the classified rental advertisements placed in their newspaper. The protected category was "persons with minor children." The discriminatory ads were not very subtle. Words and phrases such as "no children," "no kids," and "suitable for 1 or 2 adults" were used in the ads. A settlement agreement was reached through the formal mediation process and included a requirement that the staff of the newspaper attend fair housing training. Additionally, the newspaper will provide \$28,000 of free fair housing advertising over the next 18 months, the newspaper will publish a HUD Equal Housing Opportunity Notice in its real estate section and the newspaper will pay the charging party \$11,800.
 - ♦ The second PDCA resolved a fair housing charge that also involved alleged discrimination against "persons with minor children." In this case, a couple with two children applied to rent an apartment but they were turned down four days after putting down a deposit. The property owner made statements indicating that she believed the apartment would not work out for this family's situation in part because the father would be staying home all day with their two small children. She specifically stated that, "cabin fever would overtake (the father) . . . in the small apartment." This PDCA was reached through an informal mediation process. The responding party agreed to pay the charging party \$4000 and the HRC will monitor the situation for three months.

There are six other fair housing cases in various stages of investigation and mediation – stay tuned!

Fair Housing Trainings Offered

(FH 101, FH Real Estate, FH Advertising)

Both the CVOEO Fair Housing Project and the Vermont Human Rights Commission are available to speak to a group, organization or at an event about Vermont's fair housing laws.

To schedule a workshop or training please contact:

The CVOEO Fair Housing Project 1-802-864-3334 x 108 • Email: kianelli@cvoeo.org

OR The Vermont Human Rights Commission 1-800-416-2010 or

1-802-828-2480 • Email: human.rights@state.vt.us

FAIR HOUSING INFORMATION SESSIONS

All are welcomed: Tenants – Property Owners – Interested Parties Each **Tuesday** at **noon** during **April** 2008, Fair Housing Month

Join Vermont Human Rights Commission staff members for a brown bag discussion.

This will be an excellent opportunity to ask Human Rights Commission staff questions about fair housing laws and best practices, and to learn about current issues from other housing providers and tenants.

Brattleboro - April 1: Noon - 1:00PM • Melrose Terrace Community Rm, 224 Melrose St.

Lyndonville – **April 8**: Lyndonville Municipal Bldg, 119 Park Ave.

Rutland – April 15: Rutland Superior Courthouse Conference Center, 83 Center St.

Montpelier – April 22: Vermont Association of Realtors – Conference Rm., 148 State St.

Burlington – **April 29**: Firehouse Center for Visual Arts, 135 Church St. (Next to City Hall) co-sponsored by CVOEO and the City of Burlington.

Caught in the Act

Vermont Fair Housing News announces an unsuspecting recipient of its Fair Housing Good Citizen Award. Ashley Brunelle, the E-Commerce Coordinator for Burlington's weekly SEVEN DAYS newspaper, has proactively submitted questionable advertisements to the CVOEO Fair Housing Project to assist in identifying unfair advertising practices.

The Buzz in Lending

The lending world can confuse and intimidate consumers who might not have a strong grasp of lending practices. The newest terms in lending are "subprime" and "predatory lending." Not all subprime lending is predatory, but most predatory lending is subprime.

Subprime: The practice of making loans to borrowers who do not qualify for the best market interest rates because of their deficient credit history.

Predatory Lending: The practice of a lender taking advantage of borrowers by deception, fraud, or manipulation. Lending can become predatory when aggressive tactics are used to convince a borrower to agree to unfair or abusive loan terms and conditions.

April is Fair Housing Month!

April 11, 2008 is the 40th anniversary of the signing of the federal Fair Housing Act by President Lyndon B. Johnson. In recognition of all that has been accomplished since the enactment of the Fair Housing Act and that still must be accomplished, there will be events held around the state in which you will be able to learn more about all the Fair Housing Act has to offer. Please visit the events page on the CVOEO Fair Housing Project website.





CONTACT US!

The Vermont Fair Housing News is published twice annually, in the spring and fall. Please contact us, if you would like to:

- ♦ Sign up for the mailing list
- ♦ Submit ideas for articles
 - ♦ Give us feedback

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